

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
AVAYA INC.**

This **VOLUME PRICING CONTRACT** for the acquisition of telecommunications, data and structured cable products, and related services is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Avaya, with its place of business at 3606 John Simpson Trail Austin Texas 78732.

1. Contract Scope and Term

This Contract sets forth the terms and conditions governing the acquisition of telecommunications, data and structured cable products and related services. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be two (2) years commencing on the last date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR and Avaya, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

2. Definitions

Terms used in this Contract shall have the following meanings:

- A. DIR** - the Department of Information Resources.
- B. Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
- C. Manufacturer** - Avaya Inc.
- D. Reseller** - dealer, or value-added reseller designated by the Manufacturer who participates as an authorized agent of manufacturer for sales conducted under this agreement.
- E. Product** - any telecommunications, data and structured cable products item manufactured, produced or provided by the Manufacturer. Product may include any pre-loaded software necessary for operation.
- F. Services** - any value-added service that the Manufacturer and/or Reseller may perform as related to products available under this Contract. For example: warranty, support services, installation, and product training.
- G. State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
- H. Manufacturer Contract Administrator** - the individual as appointed by the Manufacturer to administer this Contract on behalf of the Manufacturer and Resellers.
- I. Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
- J. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order,

or other authorized instrument). The terms and conditions on the back of any Purchase Order shall not apply. All Purchase Orders will be governed by this Contract.

K. Information Resources Technology (Technologies) – as defined in Texas Government Code §2054.003.

L. Day Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

M. State – refers to the State of Texas.

N. Discount Schedule – shall mean the discounts offered under this contract as Appendix D.

3. **Entire Agreement and Order of Precedence**

This Contract; Appendix A, Standard Clauses for Texas DIR Contracts; Appendix B, Manufacturer's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Purchase/Service Agreement; Appendix D, Discount Schedule, and Appendix E, Avaya's Service Offering and Support Plans, constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, Appendix A, Appendix B, Appendix C, Appendix D, and finally Appendix E. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR and Avaya.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon written request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's purchase order and this Contract, the Contract term shall control.

4. **Product and Service Offerings**

Products available under this Contract are set forth as any telecommunications, data and structured cable products items manufactured, produced and/or provided by the Manufacturer. Services include any value-added service that the Manufacturer and/or its Reseller may perform as related to products available under this Contract.

A. Products

Manufacturer will maintain a product list including pricing, product descriptions, and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products, and removal of obsolete or discontinued products.

B. Services

Examples of service include, but are not limited to: warranty, support services, installation, and product training. Manufacturer will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering.

5. Contract Administration

DIR and the Manufacturer will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. DIR Contract Administrator

DIR shall provide a Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) advising DIR of Manufacturer's performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by Manufacturer.

B. Manufacturer Contract Administrator

Manufacturer shall provide a dedicated Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between a Reseller and a Customer, and iii) advising DIR of Resellers performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Manufacturer's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State

6. Use of Resellers

Manufacturer shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State. DIR agrees to permit Manufacturer to utilize designated Resellers so that sufficient resources are available to insure maximum service capability throughout the State. Such participation is subject to the following conditions:

A. Designation of Resellers

Manufacturer shall designate Resellers to participate under this Contract. DIR may request the removal of any Reseller. DIR and Avaya may agree to name additional Resellers should it be determined it is in the best interest of the State.

Manufacturer shall have the right to qualify Resellers and their participation as fulfillment agents under this Contract by product line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria, provided that: i) such criteria are uniformly applied to all potential Resellers based upon Manufacturer's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement.

All Resellers who have been approved by the Manufacturer in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Manufacturer warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means restrict any Reseller's participation or ability to quote a particular order; or prohibit Reseller from participating in other procurement opportunities offered through DIR.

B. Changes in Reseller List

Manufacturer may add and/or delete Resellers throughout the term of the contract provided DIR is in agreement, but the number of Resellers shall be no less than one (1) and not more than six (6). However, the participating Resellers must geographically provide adequate coverage to the entire State.

C. Conditions of Reseller Participation

All participating Resellers must be approved Qualified Information Systems Vendors with the State of Texas. Manufacturer shall endeavor to establish that two of the participating Resellers are Historically Underutilized Businesses as defined by the Texas Building and Procurement Commission.

D. Responsibility for Reseller Performance and Reporting

Manufacturer shall be fully liable for Resellers performance and compliance with all Contract terms and conditions herein. Manufacturer shall be responsible for reporting all products and services purchased through Resellers, in accordance with Section 12, Reporting and Administrative Fees.

E. Available Products and Services

Products and services ordered directly through Resellers shall be limited to products and services previously approved for inclusion under this Contract in Section 4, Product and services offerings, and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

F. Reseller Pricing to the Customer

All Resellers named under this contract shall offer the same discount to DIR Customers. More advantageous discounting for large volume purchases may be offered, however the discounting for such an opportunity will be the same for all participating Resellers. Resellers may not sell the products or services under this contract for a price greater than the Customer discount.

7. Pricing

The price to the Customer under this Contract will be established by the Manufacturer and shall be the lowest price offered through Avaya or its Resellers to any like governmental entity for Avaya products and services under this contract. Any violation of this provision may result in this Contract being terminated. Customers may negotiate more advantageous pricing for large volume license or services acquisitions under this contract.

A. Customer Discount

Based on a quantity of one (1), the Customer discount from the Resellers for all products and services will be a percentage off Manufacturer's Purchase (Front Market Price List). The current items being offered under this Agreement are set forth in Appendix D. Customer may negotiate more advantageous discounts for large volume purchases with a participating Reseller. The Customer Discount set forth herein shall adhere to Section 6 Paragraph F, Reseller Pricing to the Customer.

B. DIR Administrative fee

The DIR administrative fee specified in Section 12, Reporting and Administrative Fees, shall be included in the Customer Discount set forth herein. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

Shipments will be F.O.B. Customers destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 USC Secs. 4253(i) and (j).

E. Changes to Prices

Manufacturer may change the price of any product or service at any time, based upon changes to the Manufacturer's Purchase (Front Market Price List), but discounts shall remain consistent with the Customer Discount specified in Paragraph A, of this Section. Price decreases shall take effect automatically during this Contract term and Manufacturer shall pass all price decreases on to the Customer.

Manufacturer may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable discount levels as specified in Section 7, Paragraph A, Customer Discount.

8. Order Processing and Payments

All Customer purchase orders will be placed directly with the participating Resellers or Avaya. Accurate purchase orders shall be effective and binding upon Reseller once received and accepted. Avaya or Reseller will accept or reject such orders within five (5) business days of receipt.

Invoices shall be submitted by Reseller or Avaya directly to the Customer. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services shall be made to the Reseller or Avaya by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's purchase order number or other pertinent information for verification of receipt of the order by the Customer.

Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Reseller. Payment under this contract shall not foreclose the right to recover wrongful payments.

9. Software Licensing Agreement

Customers purchasing software licenses under this Contract shall hold, use and operate such software subject to compliance with the Software Licensing Agreement set forth in Section 14 of the Purchase/Service Agreement in Appendix C attached hereto. No changes to the Licensing Software Agreement terms and conditions may be made unless previously agreed to between Manufacturer and DIR. Customers may not add, delete or alter any of the language in Appendix C. Reseller shall make the Software Licensing Agreement terms and conditions available to all Customers at all times.

Compliance with the Software Licensing Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software Licensing Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software Licensing Agreement terms and conditions.

10. Purchase/Service Agreement Customers purchasing services or products under this Contract shall agree to the Purchase/Service Agreement with Manufacturer as set forth in Appendix C hereto. No changes to the Purchase/Service Agreement terms and conditions may be made unless

previously agreed to by Manufacturer and DIR. The Purchase/Service Agreement shall include Service Level Descriptions for related services.

11. Internet Access to Contract and Pricing Information

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, upon sixty (60) days from execution of the Contract, Manufacturer will be required to host the complete Contract product and service offerings, including pricing, at Manufacturer's Internet site.

Internet access to this information will be provided including all subsequent changes to the product and services offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

A. Accurate and Timely Contract Information

Manufacturer warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Manufacturer's web site. Subject to the Limitations of Liability in Attachment C, Manufacturer shall indemnify DIR, the State, and Customers for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph. Such indemnity shall be further limited to any price difference between the price displayed on the website and the appropriate price pursuant to this contract for the products and services purchased.

B. Price Data Retention and Compliance Checks

Periodic Compliance Checks of the information posted for this Contract on Manufacturer's web site will be conducted by DIR. Upon request by DIR, Manufacturer shall provide verifiable documentation that pricing listed upon this site is uniform with the Customer Discount as stated in Section 7 Paragraph A.

C. Web Site Changes

Manufacturer hereby consents to a link from the DIR web site to Manufacturer's web site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Manufacturer with subsequent notice of link termination or removal. Manufacturer shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

D. Use of Access Data Prohibited

If Manufacturer stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Manufacturer for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and Manufacturer shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

E. Responsibility for Content

Manufacturer is solely responsible for administration, content, intellectual property rights, and all materials at Manufacturer's web site. Manufacturer is solely responsible for its actions and those of its agents, employees, Resellers, or subcontractors, and agrees that neither

Manufacturer nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Manufacturer to list all participating Reseller's information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as deemed reasonably necessary by DIR. DIR also reserves the right to require a change of listed content if, in the reasonable opinion of DIR, it does not adequately represent this Contract.

12. Reporting and Administrative Fees

Manufacturer shall be responsible for reporting all products and services purchased through Resellers under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Manufacturer submits three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Manufacturer's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Manufacturer.

DIR shall have the right to verify required reports and to take any actions consistent with this Contract to enforce its rights under this section, including but not limited to, compliance checks of Manufacturer's applicable Contract books regarding only sales that are made pursuant to this Contract.

A. Detailed Monthly Report

Manufacturer shall electronically provide DIR with a detailed monthly report in a mutually agreed to format showing the dollar volume of any and all sales under this Contract for the previous monthly period. Reports shall be submitted to the DIR Go DIRect coordinator. Reports are due on the fifteenth (15th) day after the close of the previous month period. It is the responsibility of Manufacturer to collect and compile all sales under this Contract from participating Resellers and submit one (1) monthly report. The monthly report shall include the participating individual Reseller's sales for the period, the Reseller's company name, each Customer name, order date, ship date, description, part numbers, manufacturer, quantity, unit price, extended price, Customer purchase order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Manufacturer for correction.

B. Historically Underutilized Business Subcontract Reports

Manufacturer shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule:

September – November: due by December 5th

December – February: due by March 5th

March – May: due June 5th

June – August: due September 5th

C. DIR Administrative Fee

An administrative fee shall be paid by Manufacturer to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or

downwards during the term of this Contract, upon written notice to Manufacturer. Any change in the administrative fee shall be incorporated in the price to the Customer.

Manufacturer will pay DIR, on the twentieth (20th) business day after the close of the previous month period, a two percent (2%) administrative fee based on the dollar value of all sales to Customers pursuant to this Contract. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

13. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:

Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
(Email: patrick.hogan@dir.state.tx.us)

If sent to the Manufacturer:

Debbie Tanner-Jacobs
Avaya Inc.
3606 John Simpson Trail
Austin, Texas 78732
Phone: (512) 997 -2799
Fax: (512) 997- 2799
Email: tannerjacobs@avaya.com

14. Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

15. Choice of Law

The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

Avaya Inc.

The State of Texas, acting by and through the
Department of Information Resources

Authorized By: Donny Ward

Authorized By: Patrick W. Hogan

Name: Donny Ward

Name: Patrick W. Hogan

Title: ASUP

Title: Director of Business Operations

Date: 3/6/03

Date: 3/5/03

Legal: 3/5/03

APPENDIX A

STANDARD CLAUSES

STATE OF TEXAS, DIR CONTRACTS

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Appendix A

STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract. Manufacturer shall be fully liable for Resellers performance and compliance with the clauses herein.

1. **INDEMNIFICATION CLAUSE.** Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Manufacturer or its agents, employees or subcontractors, Resellers, or suppliers of subcontractors, for damages to real or tangible personal property or for bodily injury or death to any person in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract to the extent such damage, injury or death was proximately caused by the negligence of Manufacturer, any subcontractor of Manufacturer or their employees, servants or agents while performing under this agreement; provided, however, that such indemnification and save harmless obligation shall apply only to direct damages which are proven and shall not apply to the extent such damages, injury or death was caused by your act or omission or the act or omission of your agents, servants, employees or others; and, provided, further, that such indemnification and save harmless obligation is expressly conditioned on the following: (a) that Manufacturer shall be notified in writing promptly of any such claim or demand, (b) that Manufacturer shall have sole control of the defense of any action or such claim or demand and of all negotiations for its settlement or compromise; and that (c) you shall cooperate with Manufacturer in a reasonable way to facilitate the settlement or defense of such claim or demand..

Subject to the exclusions found in Appendix. C , Section 13.1., The Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Manufacturer. Manufacturer agrees to defend against any and all such claims at Manufacturer's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Manufacturer. Manufacturer agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

2. **NON-ASSIGNMENT CLAUSE.** This Contract shall be entered into and be binding upon the successors of the parties. Manufacturer may not assign this Contract without the prior written consent of DIR. Any attempt to assign this

Contract without the written consent of DIR is null and void.

3. **NO QUANTITY GUARANTEES.** This Contract is not exclusive to the named Manufacturer. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. **CONFIDENTIALITY CLAUSE.** Manufacturer acknowledges that DIR is a government agency subject to the Texas Public Information Act. Manufacturer also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Manufacturer with information related to Customers. Manufacturer shall comply with all State of Texas privacy policy guidelines, including, but not limited to, the requirement that Manufacturer shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

5. **MANUFACTURER CERTIFICATIONS.** Manufacturer certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Manufacturer's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Manufacturer, which if determined adversely to the Manufacturer will have a material adverse effect on the ability of the Manufacturer to fulfill its obligations under this Contract.

6. **EQUAL OPPORTUNITY COMPLIANCE.** Manufacturer agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the

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laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Manufacturer agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Manufacturer under this Contract. If Manufacturer is found to be not in compliance with these requirements during the term of this Contract, Manufacturer agrees to take appropriate steps to correct these deficiencies. Upon request, Manufacturer will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as available information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)

Manufacturer expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Manufacturer represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

8. COMMODITY SOFTWARE. Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Manufacturer shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Manufacturer represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order

confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code. Texas Government Code, §2157.068 does not apply to this contract.

9. RECORDS. The Manufacturer shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all compliance checks or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, name of participating Reseller for the procurement, unit price, extended price, participating Reseller invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

At a mutually agreeable time and place (access shall be granted by Avaya within ten (10) business days), Manufacturer shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Manufacturer without charge. Manufacturer's records, whether paper or electronic, shall be made available during regular office hours. Manufacturer personnel familiar with the Manufacturer's books and records shall be available to DIR staff and designees as determined by Manufacturer. Manufacturer shall provide adequate office space to DIR staff during the performance of a compliance check.

10. ABILITY TO CONDUCT BUSINESS IN TEXAS.

The Manufacturer is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Manufacturer is a "Qualified Information Systems Manufacturer" as defined in §2157.001, Texas Government Code. All computer networking products and services offered to Customers under this Contract are listed in Manufacturer's catalogue on file with the Texas Building and Procurement Commission.

11. QUOTATIONS, WARRANTY, AND RETURN POLICIES.

Manufacturer will adhere to their then-currently published policies concerning quotations. Warranty and return policies for Customers as set forth in Sections 6 and 7 of the Purchase/Service Agreement in Appendix C and will not be more restrictive or more costly than those warranty and return policies maintained by

Appendix A

Manufacturer for other similarly situated Customers for like products or services.

12. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION. Manufacturer and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

14. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS. The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Manufacturer. Additional Customer terms and conditions, which do not conflict with the contract, may be added by the mutual agreement of the parties. For individual Purchase Orders, however, the Manufacturer may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request.

16. DIR LOGO. Manufacturer and its Resellers may use the DIR logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Manufacturer or Reseller logo; (iii) the DIR logo is only used to communicate the availability of computer networking products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

17. MANUFACTURER LOGO. DIR may use the Manufacturer's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Manufacturer's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right,

title, or interest in or to Manufacturer's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Manufacturer.

18. LEASING PROVISION. The parties to this Contract may agree to provisions that allow leasing of Information Resources Technologies in addition to purchase sales.

19. SITE PREPARATION. Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Manufacturer and/or Reseller(s) prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

20. TRAINING AND TRADE SHOW PARTICIPATION. Manufacturer may be required to provide product overview training to DIR at no cost. The training will be held within the Austin, Texas area at times mutually acceptable to DIR and Manufacturer.

Manufacturer understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Manufacturer's expense. Participating Resellers may also be required to provide a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Reseller's expense. Manufacturer and all participating Resellers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Manufacturer's booth.

21. ORIENTATION MEETING. Upon 60 days from execution of the Contract, DIR may require the Manufacturer and all participating Resellers to attend an orientation meeting to discuss the Contract content and procedures. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Manufacturer. DIR shall bear no cost in the time and travel of the Manufacturer or participating Resellers for attendance at the meeting.

22. USE OF SUBCONTRACTORS. Manufacturer may subcontract installation, training, warranty, or maintenance services. However, Manufacturer shall remain solely responsible for the performance of its obligations under this Contract. If Manufacturer uses any subcontractors, Manufacturer shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

23. FORCE MAJEURE. DIR, Customer, or Manufacturer may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, , power failures, pest damage, lightning or power surges, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages,

Appendix A

performance or availability of communications services or network facilities, unauthorized use of the Products or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

24. TERMINATION FOR NON-APPROPRIATION.

Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Manufacturer will be provided ten (10) days written notice of intent to terminate.

25. TERMINATION FOR CONVENIENCE. DIR or Avaya may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. Customer may terminate a Purchase Order, in whole or in part, by giving the other party thirty (30) days written notice prior to shipment.

26. TERMINATION FOR CAUSE. Either DIR or Manufacturer may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies consistent with the Contract cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights in regards to a material breach on the part of Avaya are set forth in Section 12 of Appendix C.

27. CUSTOMER RIGHTS UNDER TERMINATION.

In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase/Service Agreement in Appendix C and Appendix A with respect to all products or services ordered and accepted prior to the effective termination date.

28. MANUFACTURER AND/OR RESELLER RIGHTS UNDER TERMINATION.

In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

28.A MANUFACTURER AND/OR RESELLER RIGHTS UNDER TERMINATION.

In the event a Purchase Order is terminated and Sections 24, 25 or 26 of Appendix A do not apply the Customer shall pay all amounts due for products or services ordered prior to the effective termination date or pay a restocking 20% fee for goods received but not installed.

29. SURVIVAL. All warranty and/or service agreements that were entered into between Manufacturer and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

30. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Matt Kelly
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 936-6550, voice
(512) 475-4759, fax
Email: matt.kelly@dir.state.tx.us

APPENDIX C
PRODUCT/SERVICE AGREEMENT
BETWEEN
AVAYA INC. AND
TEXAS DEPARTMENT OF INFORMATION RESOURCES

Avaya Inc. ("Avaya") and Texas Department of Information Resources (DIR) (hereinafter, the "DIR"), agree that the following terms and conditions apply to the equipment, software and related services listed on any Purchase Order below that is placed by the DIR Customer and accepted by Avaya. This Agreement covers products (equipment and/or software) for use only in the United States.

1. CONFIGURED AND NON-CONFIGURED PRODUCTS

1.1. Configured products consist of hardware and/or software which DIR Customers may Purchase with different designs or modifications. All other products are non-configured. For non-configured products to be used with a configured product, the DIR Customer shall provide final software detail information (final number, type of telephone sets and/or terminals, station program detail and system, network, and trunking detail) by the Change Control Date defined in Section 2.2. below.

2. CHANGES

2.1. The Change Control Date ("CCD") for Purchase Orders to acquire product(s) is the last day Avaya will accept changes to an Purchase Order. For Purchase Orders containing configured products, the CCD is shown on the front of the Purchase Order. The CCD for Purchase Orders to acquire product(s) consisting entirely of non-configured products is the date Avaya accepts the Purchase Order, unless otherwise indicated on the front of such Purchase Order.

2.2. Avaya may accept changes to the DIR Customers's original Purchase Order to acquire product(s) received on or before the CCD. Changes and price adjustments associated with changes will be reflected on a Change Order Form. All changes must be approved in writing by the DIR's Customer authorized representative and an authorized representative of Avaya. Changes received by Avaya after the CCD will be (1) installed after the In-Service Date and (2) subject to Avaya's then-current standard Customer Discount charges.

3. INSTALLATION

3.1. Avaya shall deliver the ordered products and install those products for which installation charges are specified on the Purchase Order. The "Delivery Date" is the date the products are delivered to the DIR Customer. For Avaya installed products, the "In-Service Date" is the date Avaya notifies the DIR Customer that the products are installed in good

working order and comply with Avaya's standard specifications. If the scheduled Delivery Date or In-Service Date is not met due to the DIR Customer's delay or failure to complete the DIR Customer's activities, the following may apply:

3.1.1. prices may change;

3.1.2. additional charges may apply; and/or

3.1.3. the Delivery Date and/or In-Service Date may be rescheduled.

3.2. For each Purchase Order containing configured products, all dates and installation activities required to meet the scheduled In-Service Date for that Purchase Order will be agreed to by the DIR Customers and Avaya and made part thereof on Avaya's *Project Milestones and Responsibility* document prior to Avaya's acceptance of that Purchase Order.

3.3. The DIR Customer's responsibilities throughout (1) the warranty period and (2) any post-warranty service coverage under this Agreement are described in Avaya's *Service Offerings and Support Plans* document. Additionally, the DIR Customer is responsible for removal of any hazardous material (e.g., asbestos) or correction of any hazardous conditions that affects Avaya's performance of work. Installation or services may be delayed while the DIR Customer removes or corrects the hazardous condition, with no penalty to Avaya.

3.4. With respect to each Purchase Order, Avaya will make reasonable accommodations if the DIR Customer requests a delay in the originally scheduled Delivery or In-Service Date by giving written notice prior to the Change Control Date. If the DIR Customer gives notice after the CCD, or if the DIR Customer delays the Delivery or In-Service Date more than once, or by more than a total of thirty (30) days, Avaya may: (1) deliver the equipment and commence billing the DIR Customer as of the scheduled Delivery or In-Service Date, in which case installation will be rescheduled at a mutually agreeable time and additional charges may apply; or (2) cancel the Purchase Order and bill the DIR Customer for restocking charges as set forth in Appendix A Section 28 A.

3.5. Avaya may impose additional charges if the DIR Customer changes the installation location.

3.6. Avaya's standard installation services and Avaya's and the DIR Customer's respective implementation roles and responsibilities are described in Avaya's *Service Offerings and Support Plans* document and shall only apply to Purchase Orders containing configured products to be installed by Avaya.

4. WARRANTY

4.1. CONFIGURED PRODUCTS PURCHASED UNDER THIS AGREEMENT OR REPLACEMENT EQUIPMENT MAY CONTAIN NEW, REMANUFACTURED OR REFURBISHED PARTS.

4.2. The warranty period for products purchased or licensed under the DIR Contract and this Agreement shall be as specified on the Purchase Order and begin on the Delivery Date for Customer-installed products or In-Service Date for Avaya-installed products. Avaya's standard warranty period and coverage will apply if none are specified. Avaya warrants that on the Delivery or In-Service Date, whichever is applicable, and during the warranty period, the equipment and associated operating system software (basic software acquired with the equipment that enables it to function) will operate in accordance with Avaya's standard specifications. Avaya will provide other coverage options for an additional charge. If a product is not operational during the warranty period the DIR Customer shall notify Avaya. Avaya will, at its option, repair or replace that product without charge. Replaced products become the property of Avaya.

4.3. Avaya's coverage options are described in Avaya's *Service Offerings and Support Plans* document.

4.4. If Avaya is unable during the warranty period, to repair or replace as provided in Section 4.3 above, the DIR Customer has the right to return the product for a refund of the purchase price less a reasonable allowance for use.

5. SOFTWARE WARRANTY

5.1. Avaya warrants that software which is not covered by the warranty in Section 4. will be in good working order on the Delivery or In-Service Date, whichever is applicable. For Avaya software, the warranty period is ninety (90) days unless otherwise indicated on the Purchase Order. Avaya will replace without charge any Avaya software that is not in good working order, during the warranty period, if returned to Avaya. If Avaya is unable to repair or replace the software, the full amount paid for the use of the Avaya software will be refunded. The warranty for other supplier's software is included in the software package and is provided directly from the supplier.

6. WARRANTY/POST WARRANTY SERVICE EXCLUSIONS

6.1. EXCEPT AS STATED IN SECTIONS 4. AND 5., AVAYA, ITS SUBSIDIARIES AND THEIR AFFILIATES, SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.2. The warranties provided in Sections 4. and 5. do not cover repair for damages, malfunctions or service failures caused by:

6.2.1. actions of non-Avaya personnel;

6.2.2. the DIR Customer's failure to follow Avaya installation, operation or maintenance instructions, including the DIR Customer's failure to permit Avaya access to the DIR Customer's equipment;

6.2.3. attachment of non-Avaya equipment to the products;

6.2.4. failure of products not maintained by Avaya;

6.2.5. abuse, misuse or negligent acts; or

6.2.6. force majeure conditions as stated in Appendix A item 23.

6.3. Avaya shall be under no obligation to provide service of software if:

6.3.1. The software program has been modified or moved without Avaya's prior written approval;

6.3.2. The original software program identification marks have been removed or altered;

6.3.3. Avaya does not support the system software (i.e. core operating system, system utilities and libraries, drivers, etc.);

6.3.4. The host computer does not conform to the update level necessary to support the software or has been modified, other than by Avaya personnel, so as not to conform to the specifications for which the software was designed;

6.3.5. The DIR Customer's software does not conform to the software currently listed as software subject to service support; or

6.3.6. The DIR Customer is using the software program in violation of its license.

6.4. Avaya does not warrant uninterrupted or error free product operation or that the software functions will meet the DIR Customer's requirements. Although Avaya has used reasonable efforts to minimize defects or errors in the software, except as stated in Sections 4. and 5. the DIR Customer assumes the risk of any damage or loss from the use of or inability to use the software.

6.5. AVAYA DOES NOT WARRANT THAT THE PRODUCTS WILL PREVENT, AND AVAYA WILL NOT BE RESPONSIBLE FOR, UNAUTHORIZED USE (OR CHARGES FOR SUCH USE) OF COMMON CARRIER TELECOMMUNICATION SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO PRODUCTS.

7. POST WARRANTY SERVICE

7.1. Service includes preventive and remedial maintenance, as well as replacement parts, required by products used under normal operating conditions. Replacement parts and products may be new, remanufactured or refurbished. The removed parts and products will become the property of Avaya. With respect to each Purchase Order for post-warranty service, coverage will be in accordance with the option the DIR Customer has selected as shown on the front of that Purchase Order. Avaya's coverage options are described and the

DIR Customer's responsibilities throughout the term of the DIR Customer's post warranty service coverage under this Agreement are identified in Avaya's *Service Offerings and Support Plans* document.

7.2. If the DIR Customer subsequently purchases products from Avaya or requests certification or connection of equipment similar to the products covered under this Agreement and co-locate those products with the existing ones, upon warranty expiration, the products will also be covered under the DIR Contract and this Agreement. Charges will be at the then current monthly rate and coverage will be coterminous with the existing products.

8. EQUIPMENT/SOFTWARE RELOCATION OR MODIFICATION

8.1. The DIR Customer will advise Avaya promptly of any change in location or modification to any product covered by warranty or post-warranty service under this Agreement. If the DIR Customer changes the location of any such product, Avaya reserves the right to change its response commitments with respect to that Purchase Order. Also, if such change, in Avaya's opinion, increases the cost of testing or repairs, Avaya reserves the right to increase the DIR Customer's monthly service charge with respect to that Purchase Order. If the change creates a safety hazard or is likely to cause product malfunction, Avaya may, with the DIR Customer's concurrence and at the DIR Customer's expense, correct the condition and continue to perform service under that Purchase Order. If the condition cannot be corrected to Avaya's satisfaction, Avaya reserves the right to terminate service under that Purchase Order.

8.2. Recurring charges will be invoiced in advance. Nonrecurring charges will be invoiced as incurred.

9. TITLE/RISK OF LOSS

9.1. Title and risk of loss for customer-installed equipment shall pass to the DIR Customer on the Delivery Date. Title to Avaya-installed equipment shall pass to the DIR Customer on the In-Service Date; risk of loss shall pass at time of delivery. Title and risk of loss for equipment previously used under a Term Plan or an equivalent arrangement shall pass to the DIR Customer at the time the Purchase Order is accepted by Avaya.

10. PATENT AND COPYRIGHT INDEMNITY

10.1. Avaya will defend or settle, at its own expense, any claim or suit against the DIR Customer alleging that any Avaya products furnished under the DIR Contract and this Agreement infringe any United States patent or copyright. Avaya will also pay all damages and costs that by final judgment may be assessed against the DIR Customer due to such infringement. Avaya's obligation is expressly conditioned upon the following:

10.1.1. that the DIR Customer will promptly notify Avaya in writing;

10.1.2. that Avaya shall have sole control of the defense or settlement;

10.1.3. that the DIR Customer will cooperate with Avaya in a reasonable way to facilitate the settlement or defense;

10.1.4. the action does not arise from the DIR Customer's modifications, or from combinations of products provided by Avaya with products provided by the DIR Customer or others.

10.2. If any Avaya product becomes, or in Avaya's opinion are likely to become, the subject of a claim of infringement, Avaya will, at its option:

10.2.1. procure for the DIR Customer the right to continue using the applicable product;

10.2.2. replace or modify the product to provide the DIR Customer with a non-infringing product that is functionally equivalent in all material respects; or

10.2.3. refund the purchase price or one-time Software license fee less a reasonable allowance for use.

11. USE OF SOFTWARE AND INFORMATION

11.1. The DIR Customer agrees that any technical or business information ("Information") or software owned by Avaya or its suppliers and furnished to the DIR Customer under the DIR Contract and this Agreement shall remain the property of Avaya or the supplier, and that the DIR Customer will:

11.1.1. use the Information and software only to install, operate or maintain the product for which originally furnished;

11.1.2. not reproduce or copy Information or software, in whole or in part, except as necessary for use as authorized under the DIR Contract and this Agreement or unless otherwise agreed to in writing;

11.1.3. together with any copies, return or destroy the Information and software when no longer needed or permitted for use with the product for which initially furnished; and

11.1.4. not remove Information or software from the United States.

11.2. If the DIR Customer subsequently assigns to another end user any equipment provided hereunder by Avaya, upon written request, Avaya will grant the new end user the right to use any related software and Information provided therewith by Avaya, provided the new end user also agrees, in writing, to the DIR Contract then Avaya's terms and conditions and pays any scheduled fees.

12. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY

12.1. FOR PURPOSES OF THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION, "AVAYA", SHALL BE DEEMED TO INCLUDE AVAYA, ITS SUBSIDIARIES AND THEIR AFFILIATES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS OF ALL OF THEM; AND "DAMAGES" WILL REFER COLLECTIVELY TO ALL INJURY, DAMAGE, LOSS OR EXPENSE INCURRED.

12.2. AVAYA'S ENTIRE LIABILITY AND THE DIR CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK OR SERVICE REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE:

12.2.1. FOR INFRINGEMENT, THE REMEDIES STATED IN SECTION 10;

12.2.2. FOR FAILURE OF PURCHASED EQUIPMENT OR THE ASSOCIATED OPERATING SYSTEM SOFTWARE, DURING WARRANTY PERIOD, THE REMEDIES STATED IN SECTION 4.; FOR FAILURE OF OTHER AVAYA SOFTWARE, THE REMEDIES STATED IN SECTION 5.;

12.2.3. FOR DELAYS IN THE DELIVERY OR IN-SERVICE DATE, WHICHEVER IS APPLICABLE, AVAYA SHALL HAVE NO LIABILITY UNLESS THE DELIVERY OR IN-SERVICE DATE IS DELAYED BY MORE THAN THIRTY (30) DAYS BY CAUSES NOT ATTRIBUTABLE EITHER TO THE DIR CUSTOMER OR TO FORCE MAJEURE CONDITIONS, IN WHICH CASE THE DIR CUSTOMER WILL HAVE THE RIGHT, AS THE DIR CUSTOMER'S SOLE REMEDY, TO CANCEL THE PURCHASE ORDER WITHOUT INCURRING CANCELLATION CHARGES;

12.2.4. FOR DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY OR FOR BODILY INJURY OR DEATH TO ANY PERSON NEGLIGENTLY CAUSED BY AVAYA, THE DIR CUSTOMER'S RIGHT TO PROVEN DAMAGES TO PROPERTY OR PERSON;

12.2.5. FOR AVAYA'S FAILURE TO PERFORM OR OBSERVE ANY MATERIAL TERM OR CONDITION OF THE DIR CONTRACT AND THIS AGREEMENT, WHICH CONTINUES FOR THIRTY (30) DAYS AFTER AVAYA'S RECEIPT OF THE DIR CUSTOMER'S WRITTEN NOTICE, THE REMEDY STATED IN SECTION DIR CUSTOMER MAY CANCEL THE PURCHASE ORDER WITHOUT LIABILITY FOR CANCELLATION CHARGES.

12.2.6. FOR CLAIMS OTHER THAN SET FORTH ABOVE, AVAYA'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED \$100,000.

12.3. EXCEPT TO THE EXTENT PROVIDED IN SUBSECTION 12.2.4.ABOVE, AVAYA SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND INCLUDING BUT NOT LIMITED TO CHARGES FOR COMMON CARRIER TELECOMMUNICATION SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO PRODUCTS, WHETHER OR NOT AVAYA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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14. SOFTWARE LICENSE

14.1. Avaya grants the DIR Customer a personal, non-transferable and non-exclusive right to use, in object code form, all software and related documentation furnished under the DIR Contract and this Agreement. This grant shall be limited to use with the equipment for which the software was obtained or, on a temporary basis, on back-up equipment when the original equipment is inoperable. Use of software on multiple processors is prohibited unless otherwise agreed to in writing by Avaya. The DIR Customer agrees to use the best efforts to see that the DIR Customer employees and users of all software licensed under the DIR Contract and this Agreement comply with these terms and conditions and that the DIR Customer will refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent of the software.

14.2. The DIR Customer is permitted to make a single archive copy of software. Any copy must contain the same copyright notice and proprietary markings as the original software. Use of software on any equipment other than that for which it was obtained, removal of software from the United States, or any other material breach shall automatically terminate this license.

14.3. If the terms of the DIR Contract and this Agreement differ from the terms of any agreement packaged with software, the terms of the DIR Contract then agreement in the packaged software shall govern.

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16. GENERAL

16.1. Any supplement, modification or waiver of any provision of the DIR Contract and this Agreement and of any Purchase Order must be in writing and signed by authorized representatives of both parties.

16.2. If either party fails to enforce any right or remedy available under the DIR Contract and this Agreement, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other party.

16.3. The section headings in the DIR Contract and this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of the DIR Contract or this Agreement. All references herein to "Sections" and "Subsections" shall mean sections and subsections of the DIR Contract and the Purchase/Service Agreement, unless expressly stated otherwise.

16.4. Any legal action the DIR Customer brings against Avaya with respect to the DIR Contract and this Agreement must begin within two (2) years after the cause of action arises.

16.5. The DIR Customer certifies that the products acquired hereunder are intended for the internal use of the entity hereunder and not for the purpose of resale.

16.6. ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT CONFLICT WITH THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS SHALL NOT BE ENFORCEABLE, AND THEREFORE, WILL NOT BE BINDING.



APPENDIX D DIR DISCOUNT SCHEDULE

see Attached Discount Level by Product Group

Material Code	Short Description	Product Hierarchy Description	Material Pricing Group (MPG)	Purchase (Front Market) Price	DIR Discount Frontmarket Price	Install (Front Market) Price	Maint (8 to 5) Price	After Market Discount	Purchase (After Market) Price	Install (After Market) Price	Services (Fixed) Price	Unit of Measure	Wire (Incl Labor) Price	Wire (Material Only) Price
	DEFINITY Common Equipment		A1		38%			28%						
	DEFINITY G2 & System 85 materials		B9		38%			28%						
	Avaya Messaging		AM		38%			28%						
	DEFINITY Application Software		DA		38%			28%						
	DEFINITY Enterprise Management		DB		38%			8%						
	DEFINITY Custom Group		DC		0%			0%						
	DEFINITY ProLogix		DP		38%			28%						
	DEFINITY ECS si		DS		38%			28%						
	DEFINITY ECS r		DR		38%			28%						
	DEFINITY Wireless		DY		38%			28%						
	DEFINITY ONE		OC		33%			23%						
	Connectivity Solutions ¹		AA		N/A			N/A						
	DEFINITY Audix		DX		38%			28%						
	Intuity Audix		IA		38%			28%						
	Intuity Interchange		IB		38%			28%						
	Intuity Lodging		IL		38%			28%						
	Internet Messaging		IM		38%			28%						
	DCP Terminals		DT		38%			28%						
	Guestworks/B CS Common Equipment		A3		8%			3%						
	Guestworks		GW		8%			3%						

DEFINITY BCS	GB	N/A	3%
Traditional CRM/CMS	CR	N/A	23%
Interactive Response²	EM	18%	18%
IP 400	IQ	18%	6%
S8100 Server	IR	23%	13%
IP Common	IS	23%	13%
S8300 Server	IH	23%	13%
S8700 Server	IG	23%	13%
Internet Protocol Terminals	IT	38%	28%
Octel Common Equipment	OA	38%	28%
Octel Aria	OR	38%	28%
Octel Serenade	OS	38%	28%
Octel Unified Messaging	UM	38%	28%
Octel Messaging Non-Lucent Integration	OE	23%	N/A
Octel 50 products	OP	33%	N/A
Small Messaging Multi-Products	OF	38%	28%
Unified Communication Center	UC	38%	28%
CRM Non-discountable products	N/A	N/A	N/A
&Mosaix CRMC	CT	18%	8%
Predictive Dialer (PDS12)	DL	18%	18%
Operational Excellence	QO	18%	8%
NICE Products	QP	18%	0%
CRM Multimedia Contact Center Solutions	QQ	18%	8%

eContact	QS	18%	8%
OEM Call Recorder	RX	18%	N/A
Paradyne - Feat/Option	PC	8%	N/A
Paradyne - PDYN CSU/DSU/DSL	PD	13%	N/A
Paradyne - Cables & Misc	PE	6%	N/A
Cajun Advanced Solutions	PI	18%	N/A
Cajun Client Solutions	PJ	8%	N/A
Secure Solutions	PK	13%	N/A
Advanced Network Solutions	PL	13%	N/A
WAN Edge Solutions	PM	13%	N/A
Access Solutions	PN	8%	N/A
VPNNet	PO	18%	N/A
Cajun Workgroup	PP	18%	N/A
Cajun View	PQ	18%	N/A
Cajun Rules	PR	18%	N/A
Wireless Infrastructure	PS	13%	N/A
Wireless Small	XC	33%	N/A
Clarent Net Performer	PT	13%	N/A
Access Point	PU	13%	N/A
Polycom ViewStation,	RB	8%	
Polycom peripherals, PictureTel products	RC	3%	3%
TransTalk Wireless	RF	33%	18%
Sourced Products	RK	0%	0
SS7 Gateway	S7	0%	0
Service and Maintenance	SO	0%	0

SpectraLink Wireless	SP	33%	NA
Professional Services	SS	0%	0
Training courses, media	TR	0%	0
Partner ACS/Partner II/Partner Plus Communicatio ns Systems	XG,XT,XV ,XY	23%	18
Partner 3158 sets	XA	23%	18
Merlin MAGIX 4400 Sets	XJ	23%	18
Merlin MAGIX and Mail	XK	23%	18
Peripheral Equipment, Analog Terminals	XR	%	5
CRM-Non- Discountable Products	ZC	0%	0
OEM Custom Solutions	ZP	0%	0
Non- Discountable Products	ZN	0%	0
Non- Discountable Equipment	ZZ	0%	0

CAS FOR WINDOWS 100508 100 SFTW	Custom CSM Cost Mgt A1	38%	24.37 PC
AVP SW INTG PKG SYS75/G1 100578 R2.1.1	Voice Power A1		19.99 PC
AVP SW INTG SFTW PKG 100579 SYS25 R2.1.1	Voice Power A1		16.66 PC
RTU 1231- 100582 VAS	System 75 Software A1		0 PC
G1.1 TO G3I VAS 100583 UPGRADE	Software Media A1		0 PC



Avaya Inc. Service Offerings and Support Plans

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BASIC SERVICE FOR EQUIPMENT AND SOFTWARE UNDER WARRANTY, TERM PLAN OR SERVICE AGREEMENTS

This section will acquaint you with Avaya's response objectives and support services as well as your responsibilities during your warranty, existing Term Plan or Service Agreement period.

Your Avaya Provisioning Team Leader will answer questions you may have regarding the support service available during your warranty, existing Term Plan or Service Agreement period. Your Avaya Provisioning Team Leader and Account Representative will work with you to customize your warranty, existing Term Plan or Service Agreement, if applicable, and will review with you the other Avaya services that are available.

Customer Responsibilities

In addition to the customer implementation responsibilities discussed in Section A of this document and in Section 5.C of the Purchase/Service Agreement or equivalent, the following additional responsibilities apply during your warranty, existing Term Plan or Service Agreement period. You must:

- ☐ Follow all of Avaya's installation, operation and maintenance instructions;
- ☐ Provide the proper environment and electrical and telecommunications connections as specified by Avaya;
- ☐ Provide access to the products to enable Avaya to perform the service;
- ☐ Provide adequate communications facilities and work pace for Avaya's technicians, necessary to provide services;
- ☐ Allow Avaya to perform personal air monitoring of Avaya employees while they are performing work activities on your premises;
- ☐ Allow Avaya to perform surface wipe samples to determine if asbestos dust exists in the work area;
- ☐ Have a representative at the equipment location during any Avaya service activity on the premises; and
- ☐ Maintain a procedure external to the software program(s) and host computer for reconstruction of lost or altered files, data or programs to the extent you deem necessary.
- ☐ Maintain the equipment and software covered by your existing Avaya Term Plan or Service Agreement at supported release levels.

Scope of Coverage

Dispatch of Avaya's service personnel to your premises may be limited to certain geographic areas. Avaya reserves the right to impose additional charges for travel time, incremental expenses and/or extends response time intervals outside those areas.

Additional charges will apply if you obtain service outside of your coverage hours. Replacement parts are included in your coverage unless otherwise noted.

Avaya extends post-warranty support only on products, which are at platform and release levels, currently supported by Avaya. Products which Avaya has announced it no longer supports ("Sunset Products") are not eligible for continued or renewed existing Term Plan or Service Agreement coverage. You will be required to update or to

upgrade your software and equipment to supported levels in order to continue support services coverage. Avaya shall refund any pre-paid amounts for post-warranty support services coverage for Sunset Products covering periods after the end-of-support date. Any refunds will be minus the appropriate termination fees.

Quality Protection Plan (QPP)

In order to assess the quality and reliability of its systems, Avaya monitors repair information of our customers' systems. Recurring problems are analyzed and where generally applicable corrective measures are identified, Avaya will issue an appropriate remedy, which may be a Quality Protection Plan (QPP). QPPs will be customer installable, Technical Service Center remote installable or technician installable depending on the product and delivery method directed by Avaya.

Class 1 QPPs will be handled on a proactive basis. In the case of technician installable and Technical Service Center remote installable, Avaya will schedule an appointment with you to apply the identified corrective measures. Most Class 2 and 3 QPPs will be installed on an "as needed" basis as determined by Avaya. In the case of technician installable and Technical Service Center remote installable, Avaya will schedule an appointment with you to apply the corrective measure identified.

Avaya provides most material for QPPs at no charge. There may be cases where a software QPP may require a system hardware upgrade. When a system hardware upgrade is required for a QPP, Avaya will provide you with an estimate of the hardware upgrade expense prior to performing the work.

Installation for Technical Service Center remote installable and field technician installable QPPs is provided at no charge by Avaya. If the QPP is Customer installable, and you request an Avaya field technician to perform the installation, you will be billed at Avaya's prevailing rates.

If you refuse to install a QPP as directed by Avaya, additional charges will apply for subsequent trouble resolution activities related to the refused QPP..

Similar Equipment Policy and Certification Policy

All similar telecommunications Products whether purchased with the initial system, or purchased subsequently and located at the same address must be covered by the same Avaya Service Agreement terms and conditions. For new Products purchased from Avaya or from an Avaya Authorized Dealer, the Service Agreement coverage will be effective upon Avaya's warranty expiration. If you request Service Agreement coverage more than ninety (90) days after the expiration of Avaya's warranty coverage, Avaya requires that the Products be certified before your Service Agreement coverage becomes effective. There is a charge for certification. Products purchased from a party other than Avaya or an Avaya Authorized Dealer are always subject to certification by Avaya. Avaya does not guarantee that products purchased from a third party will be certified. For products purchased from a third party, Service Agreement coverage will be effective immediately after Avaya certifies the products.

Out of Hours Remote Support

Out of Hours Remote Support is included in the coverage of those customers who are under warranty or who have selected Business Day or Around the Clock service coverage under an existing Avaya Term Plan or Service Agreement. You may call in trouble reports, or submit web enabled on-line minor service requests (<http://support.Avaya.com>) to the Technical Service Center twenty-four (24) hours a day. Out of hours alarm support is also included in the coverage of those customers under warranty or with a Service Agreement. Expert Systems will respond to receive alarms twenty-four (24) hours a day and attempt to correct all alarms remotely. Any problem, which cannot be cleared by EXPERT Systems, will be responded to according to response time as defined under "TELECOMMUNICATIONS EQUIPMENT, Response Objectives." 6 If the failure is major, as defined by Avaya, and requires a premises visit outside the coverage period, Avaya will notify you so that a determination can be made whether to dispatch a technician to your premises outside the coverage period or during the next coverage period. If a technician is dispatched outside of your coverage period, an additional charge will apply.

TELECOMMUNICATIONS EQUIPMENT

Response Objectives

Major Failure: Avaya will provide to warranty, existing Term Plan and Service Agreement customers who have a System 75/85, or DEFINITY Enterprise Communications Server ("Voice System"), a two (2) hour on-site response objective to a trouble report of a major switch failure, provided that the failure cannot be cleared remotely. This response objective will be provided during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Avaya observed holidays, regardless of the coverage option you selected. To qualify for this response objective the switch must be located within a major metropolitan area as defined by Avaya. However, if you are not within such a major metropolitan area, Avaya will provide you with an on-site response objective of four (4) coverage period hours after Avaya's receipt of the trouble report, provided that the work will be performed during your specified coverage hours and cannot be cleared remotely. A Major Failure is defined as:

1. Twenty-five percent (25%) or more of the trunks and/or stations supported by the Avaya Voice System's common control are out of service at any time due to the failure of products provided by Avaya;
2. The attendant console, or common control processor is out of service;
3. Twenty-five percent (25%) or more of the data peripherals supported by the Avaya Voice System's common control are out of service at any time due to the failure of products provided by Avaya; or
4. Twenty-five percent (25%) or more of the special network capabilities supported by the Avaya Voice System's common control are out of service at any time due to the failure of products provided by Avaya.

Minor Failure: A Minor Failure is defined as any failure of Products provided by Avaya that is not included in the definition of a Major Failure. For Avaya warranty, existing Term Plan or Service Agreement customers, any Minor Failure that cannot be cleared remotely will have a response objective of next Business Day by 5:00 p.m. after Avaya's receipt of the trouble report, provided that the work will be performed during the normal Business Day, 8:00 a.m. to

5:00 p.m., Monday through Friday, excluding Avaya observed holidays.

AVAYA-LICENSED APPLICATION/ADJUNCT SOFTWARE SUPPORT

Avaya Inc. will be the central point of accountability for supporting software applications and solutions that are licensed by Avaya during the applicable warranty and post-warranty service periods. Avaya-licensed software includes software acquired by you either directly from Avaya, or from an Avaya Authorized Dealer. Avaya will not provide post-warranty support for software licensed by Avaya to you through an Authorized Dealer unless you have purchased an Avaya Service Agreement.

Avaya-licensed software includes Avaya-labeled and non-Avaya labeled standard software as well as customized software. The software support covered by this Agreement applies to both software licensed as separate applications and software embedded in products offered by Avaya.

For software acquired directly from Avaya Inc. or if you have purchased an Avaya Service Agreement from your dealer at point of sale, Avaya will accept the initial customer call for support during both warranty and post-warranty periods. If you have not purchased an Avaya Service Agreement from the dealer at point of sale, the dealer will handle your initial support calls and involve Avaya as appropriate.

ACCOUNTABILITY FOR AVAYA-LICENSED SOFTWARE

Misplaced (Lost) Software

It is your responsibility to maintain original software media. In situations where Avaya-licensed software has been misplaced (lost), Avaya will assist in the replacement of lost software (when possible) with the understanding that you are financially accountable. In the event lost software cannot be replaced due to unavailability, you may have the option of upgrading your software solution.

Out of Warranty Support

For Avaya-labeled standard software (including co-labeled), post-warranty service agreements may be entered into provided that such software is certified for Avaya maintenance. If you do not have a post-warranty service agreement, Avaya will be available to provide consultative support (including Helpline expertise), for an additional charge if the software is supported by Avaya. Charges will be based on Avaya's current time and material charges for the types of services rendered by Avaya. Response objective intervals will be based on current Time and Material practices.

Security

Avaya Inc. offers a variety of products and/or services to assist in maximizing the security of each individual software product and system. These software products and/or services may be used by you, depending on your individual (voice, data, and multimedia) needs and policies.

Customer Responsibility

- You are responsible for the security of your systems, which includes programming and configuring the systems to prevent unauthorized use, (e.g., remote access rights).

- You are also responsible for reading all installation, instructional, and system administration documents provided with each product so as to fully understand those features that can introduce security violations (such as unauthorized access), and the steps that may be taken to reduce that risk.
- You should, with respect to EN products, use the Avaya Inc. "EN Products Security Handbook" along with the individual product documentation, as a guide, to help secure remote access capabilities.
- You should implement your own corporate security policies on all Avaya products.
- Access by Avaya to facilities and products in your network configurations, other than what is contractually agreed upon between you and Avaya, must be denied.

Additional Information Regarding Remote Access:

- If Avaya is required to provide services for products and systems, Avaya must have remote access rights.
- If Avaya does not have remote access rights to your products and systems, you will be financially responsible for all Avaya-provided on-site support.
- EN offers a variety of security products that may be used to control remote dial-up system access to EN products.

Customer Accountability for Non-Avaya-Licensed Software
 You will be accountable for software not licensed by Avaya. This type of software could include third party or customer-provided software (e.g., commercially available shrink-wrapped software and/or electronically downloaded). Avaya may provide consultative support at a charge to you for situations involving interoperability issues. For issues directly related to your generally available shrink-wrapped software, you will be referred to your third party vendor(s) for support.

Replacement of misplaced (lost) customer-provided non-Avaya-Licensed software is your responsibility.

Avaya Accountability for Non-Avaya-Licensed Software

Avaya may be available to provide consultative support for third party and customer-provided software problem resolution, depending on the software, on an individually negotiated basis. In situations where interoperability/compatibility issues exist between Avaya-labeled/certified and non-Avaya-certified software/hardware, Avaya may further assist in attempting to isolate or resolve the problem on an individually negotiated basis.

Response Objectives

SOFTWARE SUPPORT RESPONSE INTERVAL OBJECTIVES FOR AVAYA-LICENSED SOFTWARE

Software Type

Response Interval Objectives

Avaya-labeled Standard Software

- ☐ Four (4) hour response for major software failures that affect critical customer operations* as defined by Avaya
- ☐ For all other failures, response interval objectives are next business day by 5pm for troubles reported before 5pm, Monday through Saturday or two (2) business days out by 5pm if reported after 5pm on a Sunday or Avaya holiday

Avaya-labeled Customized Software

- ☐ Four (4) hour response for major software failures that affect critical customer operations* as defined by Avaya
- ☐ For all other failures, response interval objectives are next business day by 5pm for troubles reported before 5pm, Monday through Saturday or two (2) business days out by 5pm if reported after 5pm on a Sunday or Avaya holiday

Non-Avaya labeled Standard Software

- ☐ Four (4) hour response for major software failures that affect critical customer operations* as defined by Avaya
- ☐ For all other failures, response interval objectives are next business day by 5pm, Monday through Friday or two (2) business days out by 5pm on a Friday or manufacturer-observed holiday

Non-Avaya labeled Customized Software

- ☐ Four (4) hour response for major software failures that affect critical customer operations* as defined by Avaya
- ☐ For all other failures, response interval objectives are next business day by 5pm, Monday through Friday or two (2) business days out by 5pm if reported after 5pm on a Friday or manufacturer-observed holiday

* Avaya defines critical customer operations as those operations that are crucial and indispensable to the operation of your business, including, complete outages of operating system or application software; software bugs that cause a crash or loss of data; or other software problems that significantly impede access or use of the software.

Warranty support for software applications and solutions that are licensed by Avaya includes making sure that software performs in accordance with specifications and documentation. This will be accomplished through one or more of the following:

- trouble isolation
- cooperative testing with other vendors, and;
- corrective action.*

* Corrective action may include resolutions provided by Avaya, by Avaya's referral of issues to other vendor(s), or by referral of end-user Customers back to their other vendor(s) if you have contracted for referral service;

Response interval objectives during warranty periods correspond with post-warranty response interval objectives.

Warranty Coverage Support for Avaya-Licensed Software

Avaya will replace free of charge any Avaya software media or documentation that is defective in material or workmanship during the warranty period, provided the media has not been subject to misuse or neglect. You must inform Avaya immediately if you discover what you think is a

significant logic error in the software that prevents its operation. Avaya will attempt to correct or bypass any actual, reproducible error that prevents a program function from operating properly, by providing you within a reasonable time with:

- ☐ Corrective or work around instructions developed by Avaya; referral of issues to other vendor(s), if you have contracted for referral service; referring you back to your other vendor(s); or a corrected copy of the software;
- ☐ Updated documentation pages.

Additionally, during the applicable warranty period, Avaya will provide free Helpline and free web enabled on-line support to you. Helpline and on-line support can be extended via a Service Agreement. Free Helpline and on-line support provides answers to general use issues. General use issues are defined as, but not limited to, non-programming issues, and includes general information around the functionality of a product or software. Use information can be provided without knowing the specific programming and configuration details of your system. Helpline support includes the following:

- ☐ Answering any software application-specific questions;
- ☐ Providing advice, which includes directing you to sections of the documentation that may answer your question, clarifying the documentation or recommending possible training courses. It does not include consultation on appropriate methods and procedures for your environment nor does it include custom programming; On-going system administration is your responsibility. Consultative and administrative technical helpline support is available from Avaya as an additional fee-based service. Basic administrative web enabled on-line support is available at no additional charge. Consultative services are defined as, but not limited to, support which requires an understanding of your system configuration and/or specific administration, and includes programming.

☐ **EXCEPTIONS:**

- ☐ For products originally developed by Octel Messaging Division (OMD), Helpline support is limited to technical support of Authorized System Managers only.
- ☐ For Internet Protocol (IP) Solutions including DEFINITY IP Softphone, DEFINITY Telephone and CentreVu IP Agent, helpline support is not offered as part of the warranty entitlement. A separate Remote Help Desk offer is available for purchase at time of sale.

For currently supported software which is covered under a post-warranty Service Agreement, still listed as upgradeable, and Year 2000 compliant as defined by Avaya, standard software support coverage includes:

A. Avaya-licensed, Avaya-labeled Standard Software

- ☐ Software must be certified for Avaya maintenance. You are responsible for the certification.
- ☐ Defective software media will be replaced at no charge to end-user customers during warranty and post-warranty periods.

Software Bug Fixes:

- For software versions that are currently supported by Avaya under warranty or post-warranty agreements, remedies for software or bugs that impact critical customer operations will be made available at no charge to you. This does not state or imply that new versions or releases of software will be made available at no charge to you, unless specifically provided for in your contract for warranty and post-warranty support.
- For software versions that are currently supported by Avaya under warranty or post-warranty agreements, Avaya will make reasonable efforts to provide remedies for software bugs that produce intermittent and/or on-going unsatisfactory operating conditions. *For software versions that are currently supported by Avaya under warranty or post-warranty agreements, Avaya may provide automatic updates of software releases and versions inclusive in the agreement fee, when applicable. In this scenario, you will be responsible for maintaining your software at release levels currently support by Avaya or you will automatically waive your right to service.

- Remedies for non-service affecting (cosmetic) software bugs will be made available solely at Avaya's discretion.

The following services are available for an additional fee:

- Case management of software/solution issues to resolution, including interoperability/compatibility problems among Avaya-labeled software, Avaya-provided third party, and Avaya-certified customer-provided software.
 - Support for documentation inquiries, administrative inquiries, and feature functionality/interoperability inquiries.
- B. Avaya-licensed, Non-Avaya labeled (third party) Standard and Customized Software
- For an additional fee, Avaya may offer support involving issues beyond Avaya-provided components for your overall software/solution environment. Such service will be negotiated on an individual case basis.
 - In those situations where Avaya does not offer post-warranty support for Avaya-licensed, non-Avaya labeled software, Avaya will refer you to the appropriate third-party vendor for post-warranty support.

Software Bug Fixes:

- For current software versions, remedies for software bugs that impact critical customer operations will be made available from third-party vendor(s) at no charge to you.
- For existing software versions, reasonable efforts will be taken to work with third-party vendor(s) and you, to provide remedies for software bugs that produce intermittent or on-going unsatisfactory operating conditions.
- Remedies for non-service affecting (cosmetic) software bugs will be made available at Avaya's discretion.

Other:

- Support for documentation inquiries, administrative inquiries, and feature functionality/interoperability inquiries will be available to you at normal charges.

DESCRIPTIONS OF SERVICE COVERAGE OFFERINGS AND SUPPORT OPTIONS FOR EQUIPMENT AND SOFTWARE

A variety of service offerings can be provided by Avaya's nationwide professional service organization. Options available at an additional cost include Around-The-Clock service, Dedicated Technicians, etc.

EQUIPMENT COVERAGE

Business Day Service

Coverage Period: 8 a.m. to 5 p.m., Monday through Friday, excluding Avaya observed holidays.

Business Day Service is designed for customers seeking coverage during regular business hours. It offers emergency service during these critical operating hours.

Business Day Service is a standard offering provided in existing Term Plan Agreements and for systems under warranty. It is also available on a multi-year basis with length of term varying by product and/or application. Loyalty discounts are offered for multi-year commitments, provided the equipment and software are maintained at supported release levels. You may also prepay the entire contract at a discounted rate.

Around-The-Clock Service

Coverage Period: Twenty-four (24) hours, seven (7) days

Around-The-Clock is designed for customers who operate twenty-four (24) hours a day (e.g., hospitals, police and fire departments). The major benefit of this option is that coverage for Major Failures is extended to twenty-four (24) hours a day, three hundred sixty-five (365) days a year.

Maintenance Express

Maintenance Express SM (ME) will allow you to replace nonworking set(s) covered by the Agreement for which this coverage option has been selected, without maintaining an inventory. ME includes:

- ☐ Next day delivery service (if available) at no additional charge to deliver replacement set(s) for an equal number and type of nonworking set(s). The delivery will be based upon the delivery schedule of the carrier Avaya selects or your zip code and the time of day you called in your request.
- ☐ You will return the nonworking set(s), in the packaging and postage provided to you by Avaya, within ten (10) business days from the day you received the replacement set(s). If Avaya does not receive the nonworking set(s) within ten (10) business days, Avaya will bill you the price for the replacement set(s).
- ☐ Unlimited calls to Avaya at any time to request replacement set(s). If you request maintenance work to be performed beyond the coverage you have selected, Avaya may agree to perform such work at an additional charge to you. Risk of loss for the nonworking and replacement set(s) will remain with Avaya during shipment, to and from your premises.

Customer Inventory Management (CIM)

CIM will allow you to replace nonworking sets from your own inventory of spare sets. A courier service is provided once a month at no charge to deliver replacement sets for an

equal number and type of nonworking sets within ten (10) business days of customer notification. CIM includes one exchange per month. Avaya recommends that you maintain an inventory of spare sets. All similar items purchased and co-located at a CIM site must be covered under the CIM coverage option. Monthly exchanges are not cumulative. Additional monthly exchanges may be requested and provided by Avaya subject to additional charges.

Customer Maintenance Participation (CMP)

CMP is designed for customers who wish to participate in the maintenance of their telecommunications system switch. Avaya offers a plan that allows you to isolate, diagnose and repair certain system malfunctions. Additionally, you can shorten the response time for minor alarms by using your inventory of spare circuit packs.

A two percent (2%) spare inventory of each circuit pack covered under CMP is recommended. One exchange transaction per month of the circuit packs is included. When you return the circuit packs to Avaya for replacement, you assume risk of loss and are responsible for postage. Avaya is responsible for the return of the replacement packs to you.

With CMP, you are still protected under the Avaya Quality Protection Plan (QPP). Upon receipt of the replacement pack from Avaya for that portion of the switch you are maintaining, you are responsible for change out and return of the defective pack. There will not be any additional charge for any pack provided under QPP, and QPP transactions are in addition to your allowable exchange transaction every month.

You will be responsible for the quality and safety of the maintenance you perform under CMP. When you request Avaya to respond to a call, alarm, or malfunction that involves service that you agreed to perform, or ask for any service or support beyond the scope of your Agreement, additional charges will be assessed, as appropriate.

Utilization of the DEFINITY Fault Management product is required as part of this offering.

Two levels of participation are available:

- ☐ Level 1 – You will be responsible for diagnosis of all analog and digital station and analog trunk circuit pack problems and replacing defective packs. Additionally, you will also be responsible for preventing the generation of alarms to the Avaya Technical Support Center for that portion of the switch covered by CMP. If alarms are generated, appropriate charges will apply.
- ☐ Level 2 – You will be responsible for all Level 1 activity as well as diagnosing all Digital Signal Level 1 (DS1), Digital Multiplex Interface (DMI) and Integrated Services Digital Network (ISDN) trunk pack problems.

Tiers of Value for DEFINITY Call Center (ACD) and Call Management Systems (CMS) The Tiers of Value for DEFINITY Call Center (ACD) and Call Management System (CMS) coverage option provides service and support value components for the following basic Call Center products:

DEFINITY ACD Call Center software

The Call Management System (CMS) platform

Call Center customers can choose from the following three (3) tiers of value available under this support program:

- ☐ Basic
- ☐ Primary
- ☐ Enhanced

Each tier has a separate monthly maintenance price. The price for the tier that you choose corresponds to the product configuration being installed as follows:

- ☐ small or large ACD; or
- ☐ small or large ACD plus CMS Call Center

All other products related to your Avaya Call Center are options. Optional products carry monthly post-warranty service fees in addition to the monthly fees for the tier of value you choose under the Tiers of Value program.

During your warranty and post-warranty coverage period, in addition to Avaya's Basic Service described on page nine (9) of this document; you are entitled to the following services based on the support tier that you select.

Features Available During the Warranty Period*

If you have signed a Primary or Enhanced Tier of Value Service Agreement at the time you purchased your Call Center, you are entitled to the following features during the Call Center warranty period:

- ☐ Discounts on Call Center training material including, but
- ☐ not limited to, the Call Center Management Certificate Program and the Call Center Agent Training video;
- ☐ Discounts on two (2) or three (3) year Upgrade Investment Plans for your ACD;
- ☐ Discounts on the monthly maintenance fees for any of your optional Call Center-related Products.

* If your Avaya warranty has expired at the time you sign a Tier of Value Service Agreement for ACM or ACM with CMS, these features will be available to you as soon as your post-warranty Service Agreement is accepted by Avaya.

Options Available for Post Warranty Coverage

Basic (Standard) Tier of Value for ACD Software and/or SUN/CMS Platform

This tier of value includes:

- ☐ Business Day Service – (Around-The-Clock Service is available for an additional charge); and
- ☐ The Business Continuity Road Map – The Avaya Professional Services Organization ("PSO") will send you a Business Continuity Road Map that outlines the necessity of being prepared for disasters that may affect your business operation. In addition, the Business Continuity Road Map outlines critical elements for you to consider when you are preparing your disaster recovery plan. The Business Continuity Road Map is a self-directed guide that will help you to ensure that your business can continue with a minimum of operational disruption in the event of a disaster.

If you prefer, Avaya's PSO will prepare a detailed disaster recovery plan for you for an additional charge. Avaya's PSO can be contacted by calling 1-800-463-8227.

Primary Tier of Value for ACD Only

In addition to the services included in Basic Tier of Value, you are entitled to:

- ☐ Bi-annual (Spring and Fall) clock time changes for your ACD to accommodate time changes from Standard time to Daylight Savings time and then reverting back to Standard time; and

- ☐ One annual PSO Spot Check for your ACD software. These Spot Checks are not a comprehensive review of Call Center performance, but provide you with information on problem areas within the call center that require your attention. Avaya PSO consultants will review split/skill assignments, service levels, reports, and historical data to confirm your Call Center's operational health or alert you to areas that need your focus. Spot Checks are not cumulative and must be used prior to the end of each calendar year.

1. Scheduling – You are responsible for scheduling annual Spot Checks with PSO. You will receive a letter of introduction to the Avaya PSO that outlines what can be accomplished during the Spot Check and how to schedule them.

2. Activity – PSO consultants will confirm with you the areas of concern or specific reports to be reviewed during the scheduling of the Spot Check. The PSO consultants will perform the Spot Check and summarize their findings in a concise report for you.

3. Subsequent Activities – If the Spot Check reveals areas of concern, you can take corrective action or contract with PSO for a full Performance Evaluation. Additional information on Performance Evaluations is available by calling 1-800-463-8227.

Primary Tier of Value for ACD plus SUN/CMS

In addition to the services included above in the Primary tier of value for ACD only, you are entitled to the following additional SUN/CMS support:

Four (4) CMS Administration (ADM) data backups per year. The ADM data backups are described in your CMS Support Manual. You are responsible for scheduling the data backups with the CMS support team. These backups will require an on-site dispatch and will be service affecting. You are responsible for supplying fresh media for Avaya to utilize when performing the backups. You are responsible for storage of the backups and for the safety of the stored data.

Enhanced Tier of Value for ACD Only or ACD Plus SUN/CMS:

In addition to the services included in the Basic and Primary Tiers of value, you are entitled to:

- ☐ Around-The-Clock Service; and
- ☐ Call Center Expert Care Block of Hours – This service provides you with one (1) block of two (2) hours for each three (3) month period ("quarter") in your Tier of Value coverage period. [For ACD only customers, a total of eight (8) hours annually is included. For ACD plus CMS customers, a total of sixteen (16) hours annually is included [e.g., eight (8) hours for ACD plus eight (8) hours for CMS]. Block of Hours service will be performed Monday through Friday between the hours of 8:00 a.m. to 5:00 p.m., local time, excluding Avaya-observed holidays, and are non-cumulative from quarter to quarter [e.g., each two (2) hour block must be used within any given quarter]. Requests for service

outside of these hours will be negotiated on an individual case basis. All services will be performed remotely. The Block of Hours service can be used for either consulting support or systems management support as defined below.

Consulting Support includes:

1. analyzing and/or troubleshooting call flows;
2. providing real time vector consultation and design;
3. recommending call routing and vector changes;
4. explaining call center features and functionality;
5. developing and designing contingency plans for business emergencies; and
6. advising on load balancing concerns as they relate to call flows across call centers.

Systems Management Support includes:

1. implementing call routing changes; and
2. executing remote system software programming translations and moves, adds, and changes (such as setting up Callmaster® terminals, changing vectors, assigning new VDNs, configuring trunks, etc.).

Call Center Consultants may be contacted on 1-800-776-4322 to schedule Block of Hours service. Prior to beginning any service, the Call Center Consultant will develop a written scope of work that will include an estimate of the completion time required. If the completion time exceeds one (1) hour, you will be notified of the estimated charge for any additional time. Charges will be based on Avaya's then current rate for such services. Your written approval will be required prior to the commencement of any work. Block of Hours service is not cumulative; it must be used prior to the end of each year in your Enhanced Services Advantage coverage period.

Dedicated Technicians Dedicated service will only be provided at locations where all Customer Premises Equipment ("CPE") supplied by Avaya is covered by an effective warranty, existing Term Plan or Service Agreement.

Avaya's Dedicated Technician arrangement is designed for customers who rely heavily on Avaya's voice equipment for their information movement and management applications, require frequent moves, changes and rearrangements, and need immediate response to system downtime.

With this arrangement, one or more technicians are "dedicated" to you. Because they are actually located on your premises, dedicated technicians have knowledge of your operations and of your equipment performance—the kind of familiarity which makes it possible to respond to all of your needs quickly and effectively. Dedicated Technician service is a labor-only agreement. Parts used are billable unless covered by a separate contract such as a Product Agreement (Warranty section) or Service Agreement. Additional labor charges will apply for work performed by a Dedicated Technician that is in excess of the contracted schedule.

There are two (2) different types of Dedicated Technicians. A description of each, with available coverage periods, is listed below. The coverage periods are defined following the Dedicated Technicians offering descriptions.

1. Type 1 Technician

This arrangement is designed to supplement Avaya's warranty, existing Term Plan, and Service Agreement customers who have a need for a dedicated resource whose

primary focus is on voice terminal moves, changes and rearrangements. Specifically, the following services are provided by Type 1 Personnel; (a) relocation of voice terminals; (b) substitutions or modifications of features or voice terminals; (c) removal of voice terminals; (d) installation of equipment designated as suitable for Dedicated Technicians to install; and (e) emergency maintenance service. Type 1 Technicians may also perform at additional charges: (a) the installation of equipment not designated as suitable for installation by Dedicated Technicians; and (b) maintenance on equipment not covered by Avaya's warranty, existing Term Plan or Service Agreement.

Type 1 Technicians are available on an annual or monthly basis. Available coverage periods are: 1A, 1B, 2A, 2B and 2C. See below.

2. Type 1M Technician

This arrangement is designed to supplement Avaya's warranty, existing Term Plan and Service Agreement customers who have a need for dedicated on-site maintenance support. Avaya will ensure that Type 1M personnel are fully trained on your Avaya voice equipment. (Contact your Avaya Field Service representative for eligible equipment.) Because Avaya is providing you with a highly skilled dedicated resource, additional charges will apply if you request on-site support in addition to your Type 1M personnel. Type 1M personnel will perform the following services: (a) all services listed under Type 1 Technician; (b) preventive maintenance as required and remedial maintenance of Avaya voice equipment; and (c) isolation of troubles to facilities or other vendor-provided equipment connected to Avaya equipment.

Type 1M Technicians are available on an annual or monthly basis. Available coverage periods are: M1A, M1B, M2A, M2B and M2C. See below.

Coverage Periods

M1A: 8 a.m. to 5 p.m., Monday through Friday, excluding Avaya observed holidays and five (5) weeks of scheduled absences.

M 1B: 8 a.m. to 5 p.m., Monday through Saturday, excluding Avaya observed holidays and five (5) weeks of scheduled absences.

M 2A: 8 a.m. to 5 p.m., Monday through Friday, excluding Avaya observed holidays.

M 2B: 8 a.m. to 5 p.m., Monday through Saturday, excluding Avaya observed holidays.

M 2C: 8 a.m. to 5 p.m., seven days per week.

Block of Hours

Block of Hours is a move, rearrangement and change service performed in eight (8) hour increments ("blocks") per technician per day. A minimum of fifty-two (52) blocks must be used over a one (1) year period.

This service is only available to customers who have equipment that is covered under an effective Avaya Warranty, existing Term Plan or Service Agreement.. Block of Hours is a labor only agreement; all parts used are billable.

The following services are provided under Block of Hours: (a) relocation of existing voice terminals; (b) substitution or modifications of features or voice terminals; (c) removal of voice terminals; and (d) installation of equipment designated as suitable for Block of Hours personnel at an additional charge.

To schedule Block of Hours personnel, the following advance notice is required:

Number of Blocks (Per Day or Consecutive Days)	Advance Notice Required
1-2	2 days
3-5	5 days
6-10	10 days
> 10	Negotiated

Block of Hours is available 8 a.m. to 5 p.m., Monday through Friday, excluding Avaya observed holidays.

Standby Service

Avaya also provides technicians to be present on your premises on a standby basis to support special events (e.g., nationwide teleconference, sporting events, concerts and political conventions). While on the premises, technicians may respond to requests for moves, changes, rearrangements and emergency maintenance.

You will be billed for the entire time contracted for or the time the technician spends on the premises, whichever is greater. There is a one (1) hour minimum billing period and premium charges apply outside of the period 8:00 a.m. to 5:00 p.m., Monday through Friday or on Avaya observed holidays.

ENHANCED SERVICE OFFERINGS

Emergency Service Plan

If your Avaya telecommunications equipment has been damaged or destroyed as a result of an unforeseen disaster, Avaya can provide temporary service under Avaya's Emergency Service Plan for an additional charge. Depending on the severity of the damage and the system type, Avaya will provide equipment for restoration of telephone service, an interim replacement switch from a stock of dedicated emergency switches and/or a replacement switch from the production line (if needed). In a regional disaster, the federal government, hospital, police and other emergency services are given first priority.

Customer Support Web Site –

(<http://support.Avaya.com>) Avaya provides on-line support seven (7) days per week, twenty-four (24) hours per day, providing over five-thousand (5000) Frequently Asked Questions (FAQs), active Quality Protection Plan (QPP) notices that are accurate, easy-to-read, and categorized by product. This site also includes usable information such as job aids, technical papers, and standardized documentation (with product descriptions). You will have the ability to search and view more than two-thousand (2000) documents - system and feature descriptions, administration guides, etc., in the Electronic Library Material Online (ELMO).

In addition, new online capabilities provide immediate access to creating a service request and checking the status of trouble tickets instantly—by individual case or by location.

The Avaya Inc. Online Expert provides online, real-time technical assistance for administration and system maintenance to DEFINITY System customers through an interactive, efficient, and easy-to-use format.

The site includes news and events calendars to keep you informed of the latest happenings. Software downloads consisting of free shareware are available to keep your system up-to-date. There are also directory listings of telephone numbers, training courses and professional development opportunities, as well as, and links to other Avaya sites.

AVAYA-LICENSED SOFTWARE COVERAGE SUPPORT

Remote Support

Coverage Period: Remote Only – 8 a.m. to 5 p.m., Monday through Friday, excluding Avaya observed holidays.

This coverage provides remote software support. You may report trouble seven (7) days a week, twenty-four (24) hours a day through the Customer Support web site (<http://support.Avaya.com>) or by calling a designated Avaya Service Center. You will be responsible for providing a dedicated dial-up line and modem for Avaya remote access capability.

Additional charges will apply if remote support or dispatch of a technician to your premises is required, outside of the coverage period.

Business Day Support

Coverage Period: 8 a.m. to 5 p.m., Monday through Friday, excluding Avaya observed holidays.

In addition to Remote Support, described above, this coverage provides for the dispatch of a technician to your premises if the problem cannot be cleared remotely.

Around-The-Clock Support

Coverage Period: Twenty-four (24) hours a day, seven (7) days per week

Same coverage as Business Day Support except it is provided for twenty-four (24) hours, seven (7) days per week. It is designed for customers who operate twenty-four (24) hours a day (e.g., hospitals, police and fire departments). The major benefit of this support is that coverage for Major Failures is extended to twenty-four (24) hours a day, three hundred sixty-five (365) days a year.